

Remarks

This Response is responsive to the Non-Final Office Action mailed September 29, 2010 (the “Office Action”). Claims 1-7, 9, 14, 16, 17, 30, 31, 33-35, 37-39, and 41-46 were pending in the application and stand rejected. In this Response, claims 1, 3, 14, 30, 31, 33-35, 37-39, 41, 42, and 44 have been amended, claims 15, 32, 36, and 40 have been canceled, and claims 47-51 have been added. Reexamination and reconsideration of the claims are respectfully requested.

Rejections Under 35 U.S.C. § 101

Claims 38-40 stand rejected under 35 U.S.C. § 101 as purportedly being directed to non-statutory subject matter. Claims 38-40 have been amended to indicate a “non-transitory” computer readable medium. As amended claims 38-40 are in compliance with 35 U.S.C. § 101, reconsideration and withdrawal of the rejections are respectfully requested.

Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 1, 14, 30-35, 38-39, and 41-46 stand rejected under 35 U.S.C. § 112, first paragraph, as purportedly failing to comply with the written description requirement. Although Applicant believes the limitations in each claim to be adequately disclosed in the specification per 35 U.S.C. § 112, first paragraph, at least some of the rejected claims have been amended to expedite prosecution and clarify compliance with the written description requirement. Each rejected limitation is addressed in turn below.

i) Claim 1

Claim 1 as amended recites, *inter alia*, “advertising, by each of the DNS devices, the common address within the network, wherein the common address is transmitted within the network in association with BGP messages...” Support for this limitation can be found, for example, in the specification on page 11, lines 1-18. For instance, the specification discloses that “[u]pon reaching a predefined overload threshold, the monitoring software informs the routing software *in the CDN DNS server* to withdraw its

BGP routing advertisements.” (emphasis added) From this passage, one of ordinary skill in the art would understand and could infer that:

- a) if DNS servers are instructed to (or informed that they should) cause the withdrawal of BGP messages, then
- b) DNS servers must somehow be capable of causing BGP messages to be transmitted or advertised in the first place.

In other words, it logically precedes that DNS servers must cause BGP messages to be transmitted or advertised before any such BGP messages can be caused to be withdrawn by the DNS servers. Thus, Applicant believes that claim 1 as amended is in further compliance with 35 U.S.C. § 112, first paragraph.

As claims 30, 34, 38, and 41 comprise the same or similar limitations as claim 1, these claims are also in further compliance with 35 U.S.C. § 112, first paragraph. Therefore, reconsideration and withdrawal of the rejections of claims 1, 30, 34, 38, and 41 are respectfully requested.

ii) Claim 14

Claim 14 as amended recites, *inter alia*, “restarting advertising of the common address after the load characteristic decreases.” Support for this limitation can be found, for example, in the specification on page 11, lines 1-18. For instance, the specification discloses that “[t]he load in the node will slowly decrease until such time as the node can start accepting new clients, at which time it will start advertising its DNS system address to the network again.” Note that in claim 1 (from which claim 14 depends), it is indicated that the common address is transmitted within the network in association with BGP messages. Accordingly, Applicant believes that claim 14 as amended is in further compliance with 35 U.S.C. § 112, first paragraph.

As claims 35, 39, and 41 comprise the same or similar limitations as claim 14, these claims are also in further compliance with 35 U.S.C. § 112, first paragraph. Therefore, reconsideration and withdrawal of the rejections of claims 14, 35, 39, and 41 are respectfully requested.

iii) Claim 30

Claim 30 as amended recites, *inter alia*, “wherein each node is operable to monitor one or more load characteristics of the associated cache server system in the network.” As pointed out on page 5 of the Office Action, support for this limitation can be found, for example, in FIG. 3 and in the specification on page 11, lines 1-6. As claim 30 is in further compliance with 35 U.S.C. § 112, first paragraph, reconsideration and withdrawal of the rejection are respectfully requested.

iv) Claims 42 & 44

Support for the contested limitation can be found, for example, in the specification on page 2, lines 11-14:

“... the common address being usable to resolve the name of the content provider such that a request for content of the content provider by a content requestor is sent to the content server system nearest the content requestor.”

One of ordinary skill in the art would understand that the common address indicates that content is available for retrieval (i.e., the content provider having a resolvable name) by end user systems (i.e., content requestors) from each associated cache server system communicatively connected to the network. Accordingly, Applicant believes that claims 42 and 44 are in compliance with 35 U.S.C. § 112, first paragraph, and reconsideration and withdrawal of the rejection are respectfully requested.

While Applicant has shown exemplary support for the various amendments in the application as filed, it should be understood that the claims are not to be limited in any way by the examples shown.

Rejections Under 35 U.S.C. § 103

Claims 1-7, 14-17, and 30-46 stand rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over U.S. Patent No. 6,785,704 to McCanne (“McCanne”) in view of U.S. Patent No. 6,614,757 to Rochberger et al. (“Rochberger”). Applicant respectfully traverses the rejection for at least the following reasons.

Each independent claim is distinguishable over Rochberger for at least two reasons. First, Rochberger does not teach or suggest an advertisement that involves a common address, let alone a common address transmitted in association with BGP messages. For at least this reason alone, the Office Action fails to present a reference to teach each limitation of any claim, and consequently fails to support a *prima facie* case of obviousness.

Second, Rochberger does not teach the discontinuation of such advertising. On page 8 of the Office Action, the Examiner cites Col. 9, line 60 to Col. 10, line 31 of Rochberger to purportedly teach “discontinuing advertising of the common address.” However, this section teaches just the opposite. Per Rochberger’s method, a network node that becomes congested “is able to advertise this fact to the network thus eliminating additional call requests and other messages that it cannot handle due to its current load.” *Rochberger*, Col. 9, lines 60-67. In this manner, “when the congestion level on a local node exceeds a predetermined threshold, a PTSE with MCR [Maximum Cell Rate] set to zero and ACR [Available Cell Rate] set to zero is advertised to the network.” *Rochberger*, Col. 10, lines 1-10. And, as a result, the PTSE message “causes nodes... to not consider that link in route calculations.” *Id.*

Accordingly, when a node is congested or overloaded, Rochberger’s approach purposefully advertises a (PTSE) message to the network in order to discourage other nodes in the network from considering the congested node (or links thereto) in route calculations. Rochberger’s proactive advertisement of messages is quite the opposite approach to discontinuing advertisement as recited in the claims. These two approaches clearly contradict one another and, consequently, Rochberger teaches against any such discontinuation.

Accordingly, each of the independent claims 1, 30, 34, 38 and 41 are believed patentable over the outstanding rejections and in condition for allowance, as are dependent claims 2-7, 9, 14, 16, 17, 31, 33, 35, 37, 39 and 42-46.

Conclusion

For at least the reasons discussed herein, Applicant respectfully requests reconsideration of the present application. If the Examiner believes any issues could be resolved via a telephone interview, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

March 29, 2011
Date: _____

/JCS /

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